IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/01/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No. 46416 OF 2002
AND
W.P.M.P.NO.67524 OF 2002

S. Natarajamurthy .. Petitioner

-Vs-

The Commercial Tax Officer,
Tiruppur (South), Tiruppur. .. Respondent

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Prohibition as stated therein.

For Petitioner : Mr. Ramani

For Respondent : Mr. Mohana Sundaram

:O R D E R

Heard the learned counsels appearing for the parties.

2. Since there is no factual dispute, on consent of the counsels appearing, the writ petition itself is taken up for disposal.

3. The petitioner has prayed for issuing Writ of Prohibition or any other appropriate writ or direction prohibiting the respondent from enforcing

the direction dated 16.10.2002. The relevant portion of the direction is to the following effect :-

 . . . It is hereby informed that further leasing of the above Mills or running the above mills until the receipt of further orders from this office is prohibited.

This direction is in respect of Sri Arunachaleswarar Mills located at S.F.No.645, Maivadi village, Udumalapet. The said concern was originally a partnership firm consisting of several partners. In course of time, on retirement of several partners and induction of some, the partnership firm consisted of the following partners as on 25.11.2000 :-

1. M/s. Enson Cotspin (P)Ltd.,
rep. by its Director
Mr. N. Rajendran
2. S. Nataraj
3. N. Kamalaveni
4. S. Nataraja Murthi
5. V. Subramanian
6. S. Kaveri ammal
7. S. Maheswari

Subsequently, the first three partners retired on 27.11.2000 and the partnership continued with the remaining four, including the present petitioner, till 4.4.2002, on which date three other partners retired and the petitioner became the sole proprietor with effect from 4.4.2 002. The petitioner has leased out the said Mill to one P.R. Ramasami of M/s. Sivamurugan Textiles, Tiruppur and the mill is being run by the above lessee. While the matter stood thus, the petitioner was served with the impugned notice dated 16.10.2002 whereunder he was informed that certain arrears of tax relating to the years 1991-92 and 1994-95 under the Central Sales Tax Act, (hereinafter referred to as the Central Act) were due and similarly there was liability for the years 1997-98 and 1 998-99 under the Tamil Nadu General Sales Tax Act, (hereinafter referred to as the State Act) and the impugned direction already quoted was issued.

4. It is not disputed that proceedings under the Tamil Nadu Revenue Recovery Act have been initiated and notices have been issued to the erstwhile partners to clear the arrears. In the above background, it is the sole contention of the petitioner that the respondent has no jurisdiction to issue a direction to the petitioner to stop running the mill or leasing out the same.

5. Learned counsel appearing for the respondent has submitted that since dues are to be paid, such a notice had been issued.

6. There cannot be any dispute that erstwhile partners of the partnership firm were jointly and severally liable for the dues and similarly the partnership firm itself was liable and the respondent has authority to

recover the amount from the persons liable through process known to law and rightly proceedings under the Tamil Nadu Revenue Recovery Act have been initiated. There cannot be any embargo on the respondent to pursue such remedy. The short question involved in this writ petition is as to whether the respondent has jurisdiction to give a direction to the present petitioner from leasing out the mill or running the same.

7. Learned counsel appearing for the respondent is unable to point out any provision either under the Central Act or under the State Act or Rules made thereunder or even under the Tamil Nadu Revenue Recovery Act authorising the respondent to issue a prohibitory order prohibiting the petitioner from running the mill either by himself or by leasing out the same. It is of course true that there cannot be any alienation of assets of the Mill, since proceedings have already been started. However, there is no authority to issue any prohibitory direction in the manner as has been done in the present case.

8. For the aforesaid reasons, the writ petition is allowed and it is hereby declared that the direction dated 16.10.2002 is of no consequence and cannot be enforced by the respondent. It is however made clear that the respondent is free to take any action contemplated under law for recovery of the amount due. No costs. Consequently, W.P. M.P..NO.67524 of 2002 is closed.

Index : Yes
Internet : Yes
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To

The Commercial Tax Officer,
Tiruppur (South), Tiruppur.